



Australian Writers' Guild

Australian Writers' Guild Authorship Collecting Society

**Senate Select Committee on Adopting Artificial Intelligence
Supplementary Submission**

8 July 2024

We acknowledge we live and work on Aboriginal land. We pay our respects to Elders past and present. We thank them for their custodianship of land and waterways, stories, and song, and pay our respects to the oldest storytelling civilisation in the world.

WHO WE ARE

The Australian Writers' Guild (AWG) represents Australia's performance writers: 2500 playwrights, screenwriters for film and television, showrunners, podcasters, comedians, game narrative designers, dramaturgs, librettists, and audio writers nationally. Established by writers for writers, the AWG is a democratic organisation run by its members, who each year elect a National Executive Council and State Branch Committees. Our members work together to represent their fellow writers across the industry in a number of committees such as the Theatre, Television and Games committees to negotiate for fair pay and conditions, advocate to government, and serve members' professional needs.

The Australian Writers' Guild Authorship Collecting Society (AWGACS) is a not-for-profit collecting society for screenplay authors. With more than 2,000 members and 32 partnerships with overseas collective management organisations, AWGACS has collected more than \$25 million in secondary royalties and distributed the monies owed to screenwriters from Australia, New Zealand and around the world. AWGACS continuously advocates for the rights of authors to ensure they are fairly remunerated for the secondary exploitation of their works.

On 21 May 2024 the AWG and AWGACS made a joint submission to the Select Committee on Adopting Artificial Intelligence with the Australian Screen Editors Guild, Australian Production Design Guild and the Australian Cinematographers Society. Our submission can be accessed [here](#).

We look forward to appearing at the public hearing on 16 July. We would like to take the opportunity to make a supplementary submission to the Committee prior to this hearing. In our view this supplementary information should assist the Committee in its deliberations.

Results of AWG survey on AI use in the creative sector

Earlier this year, the AWG surveyed its members regarding the use of artificial intelligence (AI) technology in the creative sector. The results highlighted our members' great concerns about the negative impact the wholesale adoption of AI technology would have on our industry. Please see the visualisation of this data at Appendix A below.

Around 75% of respondents agreed that the use of AI in our industry disempowered writers. The vast majority of respondents believed that their livelihoods as creative workers would be negatively impacted by AI technology (94%) and a similar number expressed concerns about the reduction in quality of stage and screen projects where AI was used (95%).

Very few respondents (3%) indicated that they would be comfortable with their work being used to train generative AI in any circumstance, and a substantial majority of respondents (83%) stated they would not be comfortable with AI being applied to their completed work.

This discomfort translated to an unwillingness to accept jobs where AI has or will be used in the creative process. Just over half of the respondents indicated they would not accept a job requiring them to create a draft based on an outline produced by AI (51%). Similarly, most respondents stated that it would affect whether they took a job if they knew that AI would be applied to their work (63%) or if they were advised that their work would be used to train an AI system (76%). Even if an additional payment were offered (which it currently is not), the majority would still refuse to allow their work to be used to train AI systems (78%).

These responses indicate that writers want to maintain sovereignty and custodianship over the intellectual property they create. They want to work in a sustainable industry that continues to rely on human creativity and employ human workers. High quality creative work needs human insight and the application of creative skills developed over a lifetime.

Response to Submission 111 – Australia New Zealand Screen Association (ANZSA)

There is reference in the ANZSA submission to the levels of risk around the use of AI in streaming products, and that users/clients of the platforms should not have the use of AI on those platforms disclosed to them. The AWG rejects ANZSA's proposition that the use of AI for creative endeavours is 'inherently low risk' and consequently should not attract (at a minimum) transparency obligations.¹ It is unclear what measure of risk is being used here to assess the level of risk, but we do not accept the principle that the risk is inconsequential.

To state the obvious, if the issue is inconsequential, as the submission implies, then alerting users to a transparency declaration is as inconsequential as not doing so.

As yet, we have seen no contracts within our industry that seek authorial permission to use a work as 'training' data, disclose how AI may or may not be used in a particular project, nor one that deals with credit and compensation.

ANZSA's position neglects to mention the substantial risk of **copyright infringement** posed by the use of AI in creative settings. When considering any use of AI technology in the creative sector, the key question that needs to be asked is whether copyrighted works have been used to 'train' these AI systems and whether these works form the basis for its output. If so, is the copyright being exploited without the knowledge or permission of its original author?

If the answer to both of these questions is 'yes' – and given what we know about how Large Language Models (LLMs) have been developed, the answer will likely always be 'yes' – then the use of the AI system has the potential to not only harm Australian creatives' livelihoods and moral rights, but to undermine Australia's copyright regulatory framework. This identified use of AI poses a substantially higher risk than (for example) the use of internal LLMs trained on intellectual property which is owned and developed by the owners and users of these internal LLMs.

The Australian Government's interim response to the recent consultation on Safe and Responsible AI recognised that the potential for 'data sets [to] use intellectual property without approval from the owner in a way that breaches relevant intellectual property laws' is a harm which may stem from initial training processes. The Government further accepted that 'voluntary commitments ... are insufficient' to address such harms and that copyright law may need to be updated as a result. This is a high-risk area where greater transparency is required.

¹ ANZSA submission to the Senate Select Committee, 4.

In accordance with the approach taken by the European Union in the AI Act (the first extensive regulation of AI by a major regulator), even if these uses are not considered to be ‘high risk’ when compared to other uses (such as deep fakes) transparency has been identified as essential in combatting the potential for general-purpose AI models (for example GPT-4 and Gemini) to cause widespread copyright infringement. The novel risks posed by these ‘frontier’ models was emphasised by the Australian Government in its interim response on Safe and Responsible AI, with recognition that such models ‘may require targeted attention’.

ANZSA asserts that the courts should be the appropriate forum for addressing concerns about copyright infringement caused by the use of AI in these settings. However, without transparency regarding (1) when an AI system is used to produce a creative work and (2) what ‘training’ data is used by these AI systems, it is near impossible for copyright owners to protect their rights. Without transparency and disclosure obligations, the courts cannot operate as the appropriate forum for addressing these questions. For these reasons, and as we have previously argued, it is necessary to focus efforts on forward-looking regulation, with greater transparency forming a core feature of such regulation.

Furthermore, audiences want to know when AI is used to create the content that they consume. As stated in research suggests that people prefer work which is labelled as human-created, rather than AI-created, and consumers want actual humans to be involved in the creative works they engage with.² Consumers of creative content deserve transparency, both regarding whether an AI system has developed the film, TV show or other content they are paying to watch, and with respect to how their own data is being used by these platforms to train AI systems. For this reason, we would similarly reject the argument that recommendation systems used by VOD services are low risk and should not be regulated.

Lastly, ANZSA’s submission is unclear on whether or not these potential future AI systems would collect user data, and if they did, what the data would be used for and what disclosures would be made to users. If it is the case that user data will be fed in to an algorithm, it would seem a matter of importance that this is disclosed to the users. The issue of the transparency is related to the ability of users to opt out, and not participate in adding to the data pool, with or without compensation.

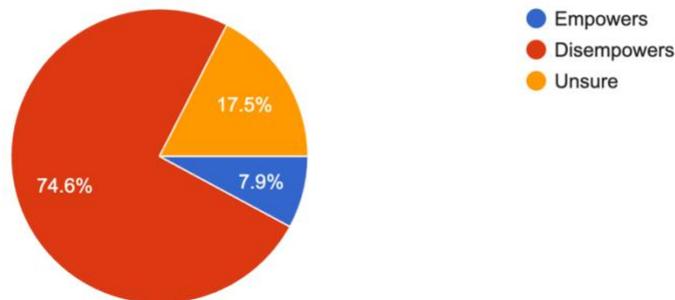
² Megan Poinski, ‘Why AI Can’t Take Away Creative Jobs’, *Forbes* (online, 17 January 2024); Bellaiche et al, ‘Human versus AI: Whether and Why We Prefer Human-Created Compared to AI-Created Artwork’(2023) 8(42) *Cognitive Research: Principles and Implications*.

APPENDIX A

Results of AWG member survey on AI (May 2024)

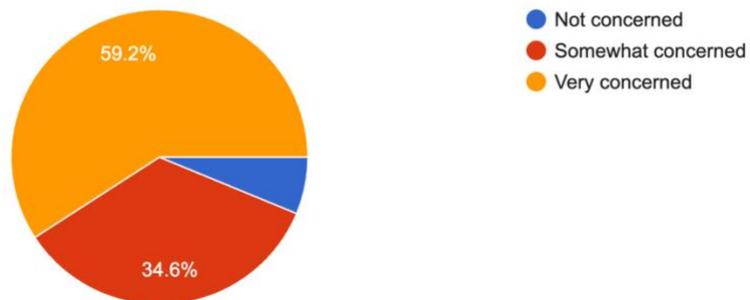
On the whole, do you think A.I. empowers writers, or disempowers writers?

240 responses



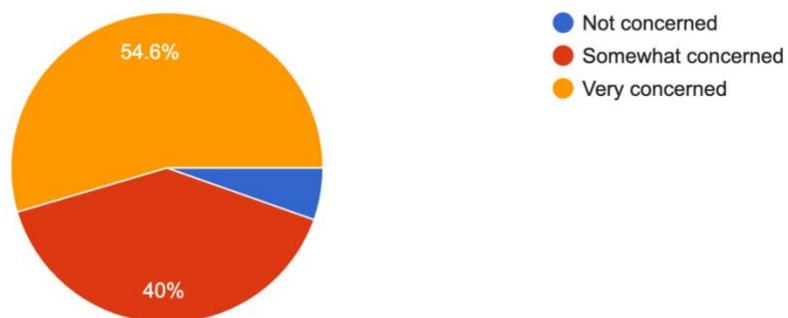
How concerned are you about A.I. programs impacting your livelihood as a writer?

240 responses



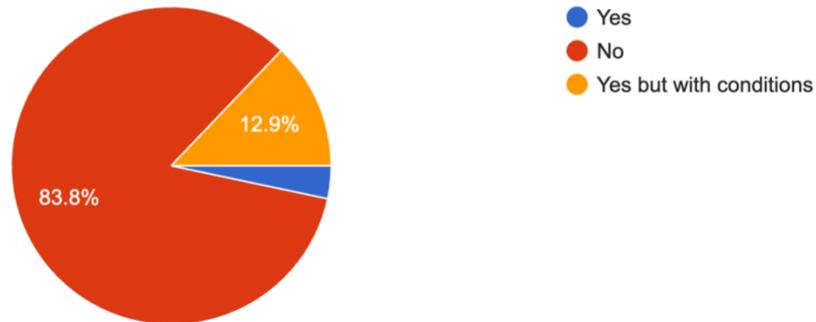
How concerned are you about A.I. programs impacting the quality of the projects you work on?

240 responses



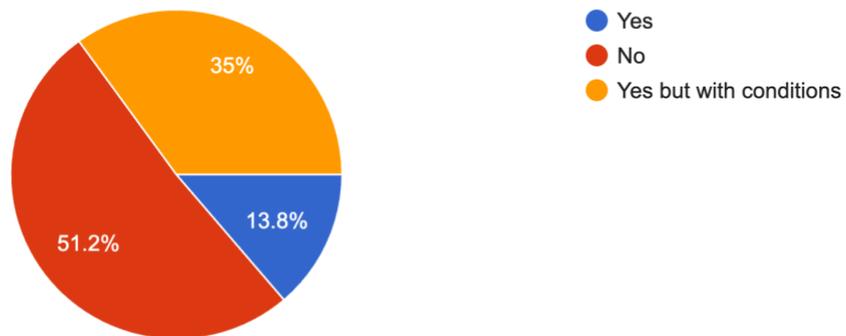
Are you or would you be comfortable knowing your work has been used to provide training data for a generative A.I.?

240 responses



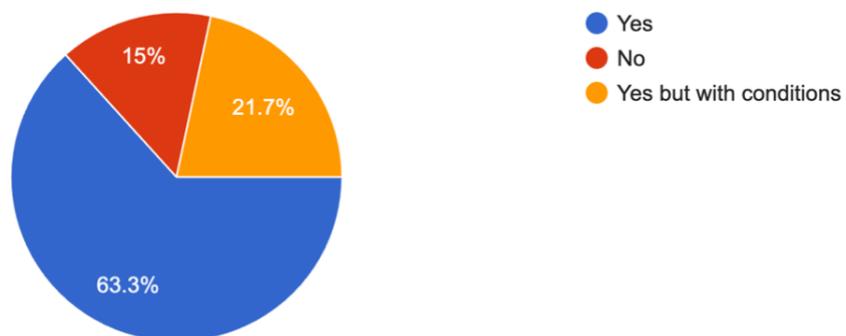
If you were offered a job for which a story outline was provided that had been produced using generative A.I. and asked to draft based on that outline, would you take the job?

240 responses



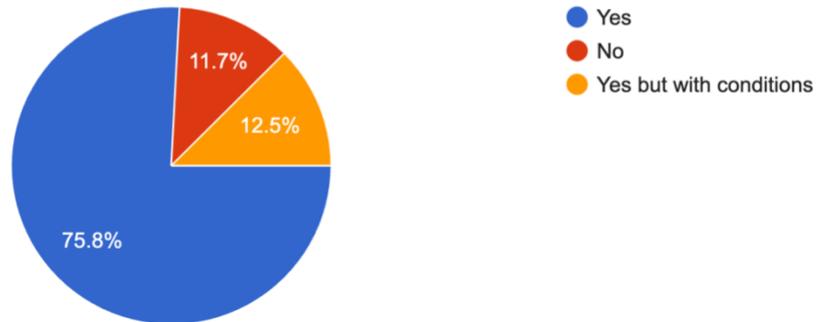
If you were advised that A.I. will be applied to your writing either during the contracted work, or once your contracted work was complete, would that effect whether you took the job?

240 responses



If you were advised that your writing would be ingested into A.I once your work was complete, would that effect whether you took the job?

240 responses



If you were offered an extra fee to 'opt-in' and allow your work to be ingested and to train A.I., would you take it?

240 responses

